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**UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING**

STATE OF WYOMING, et al.,)	
)	
Petitioners,)	Case No. 2:16-cv-00285-SWS [Lead]
)	
v.)	[Consolidated with 2:16-cv-00280-SWS]
)	
UNITED STATES DEPARTMENT OF THE)	Assigned: Hon. Scott W. Skavdahl
INTERIOR, et al.,)	
)	
Respondents,)	RESPONDENT-INTERVENOR
)	CITIZEN GROUPS' AND STATES'
)	JOINT MOTION FOR A STAY
)	PENDING APPEAL
WYOMING OUTDOOR COUNCIL, CENTER)	
FOR BIOLOGICAL DIVERSITY, CITIZENS FOR)	
A HEALTHY COMMUNITY, DINÉ CITIZENS)	
AGAINST RUINING OUR ENVIRONMENT,)	
EARTHWORKS, ENVIRONMENTAL DEFENSE)	
FUND, ENVIRONMENTAL LAW AND POLICY)	
CENTER, MONTANA ENVIRONMENTAL)	
INFORMATION CENTER, NATIONAL)	
WILDLIFE FEDERATION, NATURAL)	
RESOURCES DEFENSE COUNCIL, SAN JUAN)	
CITIZENS ALLIANCE, SIERRA CLUB, THE)	
WILDERNESS SOCIETY, WESTERN)	
ORGANIZATION OF RESOURCE COUNCILS,)	
WILDERNESS WORKSHOP, AND WILDEARTH)	
GUARDIANS,)	
)	
and)	
)	
STATE OF CALIFORNIA and STATE OF NEW)	
MEXICO,)	
)	
Respondent-Intervenors.)	

Pursuant to Fed. R. App. P. 8(a)(1) and Fed. R. Civ. P. 62(c), Respondent-Intervenors jointly request a stay of this Court’s Order Staying Implementation of Rule Provisions and Staying Action Pending Finalization of Revision Rule (Apr. 4, 2018), ECF No. 215 (“Order”), which enjoined certain provisions of the Waste Prevention Rule. Without a stay pending appeal, Respondent-Intervenors’ citizens and members will suffer irreparable harm from the irreversible loss of publicly-owned natural gas and associated emissions of harmful air pollution. Respondent-Intervenors have conferred with Federal Respondents and Petitioners Wyoming, Montana, Western Energy Alliance, and Independent Petroleum Association of America, who all oppose this request. Petitioner-Intervenor North Dakota takes no position on this request. Petitioner-Intervenor Texas did not respond to Respondent-Intervenors’ conferral.

Respondent-Intervenors meet the test for a stay pending review: they are likely to succeed on appeal and will be irreparably injured in the meantime; the other parties will not be harmed by complying with a final regulation; and a stay is in the public interest. 10th Cir. R. 8.1; *see also Fed. Trade Comm’n v. Mainstream Mktg. Servs., Inc.*, 345 F.3d 850, 852 (10th Cir. 2003).

In its Order enjoining certain provisions of the Waste Prevention Rule, this Court asserted that it need not consider (and it did not consider) whether the movants had established the four prerequisites for a preliminary injunction. Order at 9–10 & n.10. But as explained in Respondent-Intervenors’ responses to Petitioners’ motions, courts do not have authority to enjoin final agency regulations unless the movants have met the four preliminary injunction factors. Citizen Groups’ Resp. to Pending Mots. 19–22 (Mar. 16, 2018), ECF No. 209 (“Citizens’ Resp.”); State Resp’ts’ Consolidated Opp’n to Pet’rs’ Mots. 17–18 (Mar. 16, 2018), ECF No. 208 (“States’ Resp.”). Indeed, just the day before this Court’s order, another court in this Circuit

held that “[a] stay of agency action under APA § 705 is a provisional remedy in the nature of a preliminary injunction,” whose “availability turns on the same four factors considered under a traditional Federal Rule of Civil Procedure 65(a) analysis.” *Sierra Club v. Fed. Highway Admin.*, No. 1:17-cv-01661-WJM-MEH, Slip Op. at 11 (D. Colo. Apr. 3, 2018), ECF No. 135 (Exhibit A) (citing *Winkler v. Andrus*, 614 F.2d 707, 709 (10th Cir. 1980)). Citing Tenth Circuit precedent, that court emphasized that “any modified test which relaxes one of the prongs for preliminary relief and thus deviates from the standard test is impermissible.” *Id.* (citing *Diné Citizens Against Ruining Our Env’t v. Jewell*, 839 F.3d 1276, 1282 (10th Cir. 2016)). This Court cited no case law to support its unprecedented contrary opinion.

Respondent-Intervenors are also likely to succeed on the merits of their appeal because, as explained in their earlier responses, 5 U.S.C. § 705 does not authorize a court to enjoin a final regulation for the purpose of allowing an agency to reconsider the regulation. *See Citizens’ Resp.* at 8; *States’ Resp.* at 20. Nor, for the reasons explained in Respondent-Intervenors’ earlier responses, can a court grant substantive relief after concluding that a case is prudentially unripe or moot. *See Citizens’ Resp.* at 5–7; *States’ Resp.* at 20–21.

Furthermore, in failing to assess the four preliminary injunction factors, this Court ignored the irreparable injury to Respondent-Intervenors’ citizens and members from enjoining the Rule, recently recognized by the district court in *California v. BLM*, --F. Supp. 3d--, 2018 WL 1014644, at *14–16 (N.D. Cal. Feb. 22, 2018). This Court’s order enjoining provisions of the Waste Prevention Rule will lead to the waste of 16.3 billion cubic feet of publicly-owned natural gas, over 140,000 tons of methane emissions, and significant emissions of other dangerous air pollutants. *See Decl. of Hillary Hull* 6–8 (Mar. 26, 2018), ECF No. 209-2. And while this Court summarily concluded that Industry Petitioners “will be irreparably harmed by

full and immediate implementation of the 2016 Waste Prevention Rule,” Order at 9, it ignored the record evidence that the compliance costs associated with the Waste Prevention Rule represent only 0.15% of the profits of even small oil and gas operators, VF_0000575–76, and the well-established precedent that compliance costs do not constitute irreparable harm, Citizens’ Resp. 12–13, States’ Resp. at 10–13. Finally, this Court ignored the public’s interest in final agency regulations remaining in effect until they are found unlawful or duly revised or rescinded.

For these reasons and others, Respondent-Intervenors appealed this Court’s Order on April 5 and 6, 2018. Pursuant to Fed. R. App. P. 8(a)(1), Respondent-Intervenors move this Court for a stay of its Order prior to requesting the same relief before the Tenth Circuit. Because Respondent-Intervenors are injured by this Court’s Order every day, Respondent-Intervenors respectfully request an expedited ruling on this motion.

Respectfully submitted on April 6, 2018,

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CERTIFICATE OF SERVICE

I certify that on April 6, 2018, I filed the foregoing **RESPONDENT-INTERVENOR CITIZEN GROUPS' AND STATES' JOINT MOTION FOR A STAY PENDING APPEAL** using the United States District Court CM/ECF which caused all counsel of record to be served by electronically.

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